

20210

RECORDATION NO. \_\_\_\_\_ FILED 1425

AUG 2 1996 -9 25 AM

INTERSTATE COMMERCE COMMISSION

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20210-A

RECORDATION NO. \_\_\_\_\_ FILED 1425

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INTERSTATE COMMERCE COMMISSION

July 26, 1996

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are two (2) copies of a Security Agreement, dated as of July 30, 1996, a primary document as defined in the Board's Rules for the Recordation of Documents and two (2) copies of an Assignment of Lessor's Interest in Leases, dated as of July 30, 1996, a secondary document related thereto.

The names and addresses of the parties to the enclosed documents are:

Security Agreement

Pledgor: NorRail, Inc  
308 12th Avenue South  
Buffalo, Minnesota 55313

Secured Party: The First National Bank of Maryland  
25 South Charles Street  
Baltimore, Maryland 21201

Mr Vernon A Williams  
July 26, 1996  
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Assignment of Lessor's Interest in Leases

Assignor: NorRail, Inc  
308 12th Avenue South  
Buffalo, Minnesota 55313

Assignee The First National Bank of Maryland  
25 South Charles Street  
Baltimore, Maryland 21201

A description of the railroad equipment covered by the enclosed Security Agreement is: 54 MBLX railcars set forth on Exhibit A attached

A description of the Lease is Rider No 31 to the Master Rail Car Lease dated October 24, 1995

Also enclosed is a check in the amount of \$42 00 payable to the order of the Surface Transportation Board covering the required recordation fee

Kindly return stamped copies of each of the enclosed documents to the undersigned.

Very truly yours,



Robert W Alvord

RWA/bg  
Enclosures

RECORDATION 20210

AUG 2 1996 - 9 25 AM

## SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS SECURITY AGREEMENT (this "Agreement") is made as of this 30 day of July, 1996, by NORRAIL, INC., a Minnesota corporation (the "Pledgor"), in favor of THE FIRST NATIONAL BANK OF MARYLAND (the "Lender"); witnesseth:

## Recitals

The Pledgor has applied to the Lender for a loan in the principal amount of \$\_\_\_\_\_ (the "Financial Accommodations") pursuant to the provisions of a certain Loan Agreement of even date herewith by and between the Lender and the Pledgor (the "Loan Agreement"). The Financial Accommodations are to be evidenced by, and repaid with interest in accordance with provisions of, a Promissory Note of even date herewith from the Pledgor payable to the Lender in the principal amount of the Financial Accommodations (the "Note"). The Lender has required, as a condition to the making of the Financial Accommodations, the execution of this Agreement by the Pledgor.

NOW, THEREFORE, in order to secure (a) the prompt payment of all past, present, and future indebtedness, liabilities, and obligations of the Pledgor to the Lender of any nature whatsoever in connection with the Financial Accommodations, including, without limitation, the Liabilities (as defined in the Loan Agreement) (collectively the "Pledgor's Liabilities"), and (b) the performance by the Pledgor of all of the terms, conditions, and provisions of this Agreement, the Loan Agreement, the Note, and of any other note, security agreement, pledge agreement, guaranty agreement, mortgage, deed of trust, loan agreement, hypothecation agreement, subordination agreement, indemnity agreement, letter of credit application, assignment, or any other document previously, simultaneously, or hereafter executed and delivered by the Pledgor and/or any other person, singly or jointly with another person or persons, evidencing, securing, guaranteeing, or in connection with any of the Pledgor's Liabilities (collectively, the "Loan Documents"), the Pledgor agrees with the Lender as follows:

1. Collateral. The Pledgor hereby grants to the Lender a security interest in the following property of the Pledgor: the railroad cars described in Exhibit A attached hereto and made a part hereof by reference, together with (i) all additions, parts, fittings, accessories, special tools, attachments, and accessions now and hereafter affixed thereto and/or used in connection therewith, (ii) all replacements thereof and substitutions therefor, and (iii) all cash and non-cash proceeds and products thereof.

The term "Collateral" as used herein means each and all of the items of Collateral described above and the term "proceeds" as used herein includes, without limitation, the proceeds of all insurance policies covering all or any part of such items of Collateral.

2. Payment and Performance. The Pledgor will pay the Pledgor's Liabilities as and when due and payable and will perform, comply with, and observe the terms and conditions of the Loan Documents to be performed, complied with, and observed by the Pledgor.

3. Title to Collateral. The Pledgor represents and warrants that it is the owner of the Collateral and has good and marketable title to the Collateral free and clear of all liens, security interests, and other encumbrances except for those in favor of the Lender.

4. Further Assurances. The Pledgor will defend its title to the Collateral against all persons and will, upon request of the Lender, (a) furnish such further assurances of title as may be required by the Lender, and (b) deliver and execute or cause to be delivered and executed, in form and content satisfactory to the Lender, any financing, continuation, termination, or security interest filing statement, security agreement, or other document as the Lender may request in order to perfect, preserve, maintain, or continue the perfection of the Lender's security interest in the Collateral and/or its priority. The Pledgor will pay the costs of filing any financing, continuation, termination, or security interest filing statement as well as any recordation or transfer tax required by law to be paid in connection with the filing or recording of any such statement. A carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement.

5. Transfer and Other Liens. The Pledgor will not sell, lease, transfer, exchange, or otherwise dispose of the Collateral, or any part thereof, without the prior written consent of the Lender and will not permit any lien, security interest, or other encumbrance to attach to the Collateral, or any part thereof, other than those in favor of the Lender.

6. Financial Statements, Books and Records. The Pledgor will (a) at all times maintain, in accordance with generally accepted accounting principles, accurate and complete books and records pertaining to the Collateral and any contracts and collections relating to the Collateral, (b) furnish to the Lender promptly upon request, and in the form and content and at the intervals specified by the Lender, such financial statements, reports, schedules, and other information with respect to the Collateral as the Lender may from time to time require, (c) at all reasonable times and without hindrance or delay, permit the Lender or any person designated by the Lender to enter any place of business of the Pledgor or any other premises where any books, records, and other data concerning the Collateral may be kept and to examine, audit, inspect, and make extracts from and photocopies of any such books, records, and other data, and (d) mark its books and records in a manner satisfactory to the Lender so that the Lender's rights in and to the Collateral will be shown.

7. Name of Pledgor, Place(s) of Business, and Location of Collateral. The Pledgor represents and warrants that its correct legal name is as specified on the signature lines of this Agreement, and each legal or trade name of the Pledgor for the previous twelve (12) years (if different from the Pledgor's current legal name) is as specified below the signature lines of this Agreement. Without prior written notice to the Lender, the Pledgor will not change its name. The Pledgor warrants that the address of the Pledgor's chief executive office is as specified below the signature lines of this Agreement. All books and records pertaining to the Collateral have been, are, and will be located at the Pledgor's chief executive office specified below. The Pledgor will immediately advise the Lender in writing of any change in the location of the places where the books and records concerning the Collateral, or any part thereof, are kept.

8. Insurance. The Pledgor will at its expense cause to be carried and maintained with companies of reputable standing public liability insurance with respect to third party personal injury and property damage, against such risks and in such amounts as is consistent with prudent industry practice, as to which the Lender and any of the Lender's assignees will be named additional insured. The Pledgor shall maintain physical damage insurance covering the Railcars (as defined in the Loan Agreement) in an amount not less than the outstanding principal amount of the Note with companies of reputable standing. The Pledgor will provide to the Lender and to each assignee of the Lender, upon request, a statement of the insurance maintained pursuant to the insurance provisions of this Agreement.

Any policies of insurance carried in accordance with this Section 8 shall provide that, if any such insurance is canceled for any reason whatsoever, the Lender shall receive 30 days' prior notice of such cancellation.

The Pledgor shall cause the physical damage insurance on the Railcars to provide that the proceeds up to the outstanding principal amount of the Note, for any loss or damage to any Railcar, if any, shall be payable solely to the Lender. The Pledgor shall, with respect to any renewal policy or policies, furnish certificates or binders evidencing such renewal as soon as practicable, but in no event later than thirty (30) days after such renewal is effected or the expiration date of the original policy or policies.

Notwithstanding the foregoing provisions of this paragraph 8, in lieu of providing the insurance as described above, the Pledgor may maintain a program of self-insurance with respect to third party personal injury and property damage and physical damage insurance covering the Railcars satisfactory to the Lender. In connection with such program of self-insurance, the Pledgor shall establish an insurance escrow account with the Lender. The Pledgor shall deposit \$45,000 into such escrow account and maintain a

balance of not less than \$45,000 in such escrow account throughout the term of the Loan. Such account shall bear interest at the Lender's customary rate for such accounts. The amounts in such account shall only be used by the Pledgor to satisfy the Pledgor's obligations under paragraph 12 hereof and Section 5.14 of the Loan Agreement. The Pledgor hereby grants to the Lender a security interest in such account and agrees that upon an Event of Default hereunder, the Lender shall have the right to apply any moneys in such account to the Pledgor's Liabilities in such order as the Lender may determine in its sole discretion.

9. Marking of the Railcars. Pledgor will not change the reporting mark of any Railcar except in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to Lender by Pledgor and a supplement to this Agreement with respect to such new reporting marks shall be filed or recorded in all public offices where this Agreement shall have been filed or recorded.

10. Maintenance; Operation; Possession; Compliance with Laws. Pledgor, at its own cost and expense, shall maintain, repair and keep each Railcar (i) in accordance with prudent Class I railroad industry maintenance practices in existence from time to time, (ii) in a manner consistent with maintenance practices used by Pledgor in respect of equipment owned or leased by Pledgor similar in type to such Railcar, (iii) in accordance with maintenance requirements of insurance policies covering such Railcar, and (iv) in compliance, in all material respects, with all applicable laws and regulations, including any applicable Interchange Rules as applicable to continued use by Pledgor (other than with respect to bearing configuration which is not in compliance with the Interchange Rules but which Pledgor must maintain in a condition consistent with its current configuration, ordinary wear and tear excepted; provided, however, that Pledgor may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not materially adversely affect the rights or interests of Lender in the Collateral or hereunder or otherwise expose Lender to criminal sanctions.

Subject to the terms of the Loan Agreement and applicable laws and regulations, Pledgor shall be entitled to the possession of the Railcars and to the use of the Collateral by it upon lines of railroad owned or operated by it, upon lines of railroad over which Pledgor has trackage or other operating rights or over which railroad equipment of Pledgor is regularly operated pursuant to contract and on railroad lines of other railroads in the United States, in the usual interchange of traffic or in-through or run-through service and shall be entitled to permit the use of the Railcars upon connecting and other carriers in the usual interchange of traffic or pursuant to in-through or run-through agreements. The Railcars may not be used for the shipment of any hazardous waste requiring special permits.

Notwithstanding the foregoing provisions of this Section, the Lender agrees that so long as the Lease (as defined in the Loan Agreement) remains in effect, the Pledgor will have performed its obligations under this Section to the extent the Lessee (as defined in the Loan Agreement) complies with its obligations with respect to maintenance, repair and compliance with laws and regulations in the Lease.

Whenever in the Loan Documents the Pledgor is expressly obligated to notify the Lender or to take any other action immediately or promptly upon the occurrence of any event affecting any Railcar, the Pledgor's obligation shall be limited (in respect to any Railcar that is, at the time of occurrence of the event giving rise to the obligation, to give notice or take other action, subject to the Lease) to an obligation to notify the Lender or to take the action otherwise specified in the Loan Documents immediately or promptly, as the case may be, after receiving notice from the Lessee or acquiring actual knowledge (whichever shall first occur) of the event giving rise to the obligation to give notice or take such other action.

11. Reports. On or before March 1, 1997, and on each March 1 thereafter, Pledgor will furnish to Lender an accurate statement, as of the preceding December 31, showing any change in the amount, description and reporting marks of the Railcars during the twelve (12) months ending on December 31 and the amount, description and reporting marks of all Railcars that may have suffered a casualty during the twelve (12) months ending on December 31, and such other information regarding the condition or repair of the Railcars as Lender may reasonably request.

12. Indemnification. Pledgor hereby agrees to indemnify, defend (including attorneys' fees and expenses, consultant fees and expenses, expert fees and expenses and the burden and expense of defending Lender) and hold harmless Lender from any and all claims, suits, administrative proceedings, costs expenses, damages and liabilities, in law or in equity (including those arising as a result of the presence or release of any hazardous material or hazardous substance), arising out of or in connection with Pledgor's use or operation of the Railcars or with respect to Pledgor's negligent or wrongful acts or omissions with respect to the Railcars. "Use or operation" as used in the preceding sentence includes all causes of action, suits, claims, demands or judgments of any nature arising from injury to or death of any person, or damage to or loss of property, from management, control, use, possession, operation, storage, subleasing, assignment, or relocation of, or any defect in, the Railcars.

13. Taxes. Except to the extent that the validity or the amount thereof is being contested in good faith and by appropriate proceedings, the Pledgor will pay as and when due and payable all taxes, levies, license fees, assessments, and other impositions

levied on the Collateral or any part thereof or for its use and operation .

14. Performance by the Lender. If the Pledgor fails to perform, observe, or comply with any of the conditions, terms, or covenants contained in this Agreement, the Lender, after notice to and demand upon the Pledgor prior to an Event of Default and without notice to or demand upon the Pledgor after an Event of Default and without waiving or releasing any of the Pledgor's Liabilities or any Event of Default, may (but shall be under no obligation to) at any time thereafter perform such conditions, terms, or covenants for the account and at the expense of the Pledgor, and may enter upon any place of business or other premises of the Pledgor for that purpose and take all such action thereon as the Lender may consider necessary or appropriate for such purpose. All sums paid or advanced by the Lender in connection with the foregoing and all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred in connection therewith (collectively, the "Expense Payments") together with interest thereon at a per annum rate of interest which is equal to the greater of (a) the Prime Rate (as defined in the Loan Agreement) plus two percent (2%) per annum, or (b) the then highest rate of interest charged on the principal of any of the Pledgor's Liabilities, plus two percent (2%) per annum, from the date of payment until repaid in full, shall be paid by the Pledgor to the Lender on demand and shall constitute and become a part of the Pledgor's Liabilities secured hereby.

15. Default. The occurrence of any one or more of the following events shall constitute an event of default (an "Event of Default") under this Agreement: (a) failure of the Pledgor to perform, observe, or comply with any of the provisions of this Agreement or of the other Loan Documents, and such failure shall remain uncured for a period of twenty (20) days after the date of written notice from the Lender to the Pledgor; or (b) the occurrence of an event of default (as defined therein) under any of the other Loan Documents.

16. Rights and Remedies Upon Default. Upon the occurrence of an Event of Default hereunder (and in addition to all of its other rights, powers, and remedies under this Agreement), the Lender may, at its option, and after notice to the Pledgor, declare the unpaid balance of the Pledgor's Liabilities to be immediately due and payable. The occurrence or non-occurrence of an Event of Default shall in no manner impair the ability of the Lender to demand payment of any portion of the Pledgor's Liabilities which are payable on demand. The Lender shall have all of the rights and remedies of a secured party under the Maryland Uniform Commercial Code and other applicable laws. Upon the occurrence of an Event of Default hereunder, the Lender or its agents may enter upon the Pledgor's premises to take possession of the Collateral, to remove it, to render it unusable, or to sell or otherwise dispose of it, all without judicial process or proceedings.



Any written notice of the sale, disposition, or other intended action by the Lender with respect to the Collateral which is required by applicable laws and is sent by certified mail, postage prepaid, to the Pledgor at the address of the Pledgor's chief executive office specified below, or such other address of the Pledgor which may from time to time be shown on the Lender's records, at least ten (10) days prior to such sale, disposition, or other action, shall constitute reasonable notice to the Pledgor. The Pledgor shall pay on demand all costs and expenses, including, without limitation, attorneys' fees and expenses, incurred by or on behalf of the Lender (a) in enforcing the Pledgor's Liabilities, and (b) in connection with the taking, holding, preparing for sale or other disposition, selling, managing, collecting, or otherwise disposing of the Collateral. All of such costs and expenses (collectively, the "Liquidation Costs") together with interest thereon at a per annum rate of interest which is equal to the greater of (a) the Prime Rate plus two percent (2%) per annum, or (b) the then highest rate of interest charged on the principal of any of the Pledgor's Liabilities, plus two percent (2%) per annum, from the date of payment until repaid in full, shall be paid by the Pledgor to the Lender on demand and shall constitute and become a part of the Pledgor's Liabilities secured hereby. Any proceeds of sale or other disposition of the Collateral will be applied by the Lender to the payment of the Liquidation Costs and Expense Payments, and any balance of such proceeds will be applied by the Lender to the payment of the remaining Pledgor's Liabilities in such order and manner of application as the Lender may from time to time in its sole discretion determine. For purposes of calculating the amount of additional interest owing in the event of any such sale or other disposition, the railroad cars constituting a portion of the Collateral shall be considered to have been retained in service by Pledgor.

17. Remedies Cumulative. Each right, power, and remedy of the Lender as provided for in this Agreement or in the other Loan Documents or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or in the other Loan Documents or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Lender of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by the Lender of any or all such other rights, powers, or remedies.

18. Waiver. No failure or delay by the Lender to insist upon the strict performance of any term, condition, covenant, or agreement of this Agreement or of the other Loan Documents, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, covenant, or agreement or of any such breach, or preclude the Lender from exercising any such right, power, or remedy at any later time or times. By accepting payment after the due date of

any of the Pledgor's Liabilities, the Lender shall not be deemed to have waived the right either to require payment when due of all other Pledgor's Liabilities or to declare an Event of Default for failure to effect such payment of any such other Pledgor's Liabilities. The Pledgor waives presentment, notice of dishonor, and notice of non-payment with respect to accounts and chattel paper.

19. Miscellaneous. The paragraph headings of this Agreement are for convenience only and shall not limit or otherwise affect any of the terms hereof. Neither this Agreement nor any term, condition, covenant, or agreement hereof may be changed, waived, discharged, or terminated orally but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought. This Agreement shall be governed by the laws of the State of Maryland and shall be binding upon the heirs, personal representatives, successors, and assigns of the Pledgor and shall inure to the benefit of the successors and assigns of the Lender. As used herein, the singular number shall include the plural, the plural the singular, and the use of the masculine, feminine, or neuter gender shall include all genders, as the context may require, and the term "person" shall include an individual, a corporation, an association, a partnership, a trust, and an organization. Unless varied by this Agreement, all terms used herein which are defined by the Maryland Uniform Commercial Code shall have the same meanings hereunder as assigned to them by the Maryland Uniform Commercial Code.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

The signature and seal of the Pledgor are subscribed to this Agreement the day and year written above.

ATTEST:

NORRAIL, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

RUSSELL S. ADAMS

Vice President Sales

Address of Pledgor's chief  
executive office:

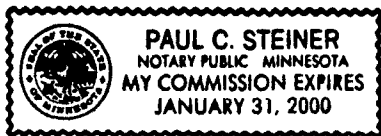
308 12th Avenue South  
Buffalo, Minnesota 55313

Previous legal and/or trade name(s) of the Pledgor: NONE

STATE OF Minnesota, COUNTY OF Wright, TO WIT:

I HEREBY CERTIFY, that on this 25th day of July, 1996, before me, the undersigned, a Notary Public of the State of MN, personally appeared Russell Adams, who acknowledged himself to be the \_\_\_\_\_ of NorRail, Inc., a Minnesota corporation, known (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized \_\_\_\_\_ of said corporation by signing the name of the corporation by himself as \_\_\_\_\_.

AS WITNESS my hand and Notarial Seal.



Paul C. Steiner  
Notary Public

(SEAL)

My Commission Expires:

B:FN164203.SEC/NorRail/Disk1/cmr

EXHIBIT A

Fifty-Four (54) covered hopper railcars bearing the following reporting marks and numbers:

MBLX 53026	MBLX 53053
MBLX 53027	MBLX 53054
MBLX 53028	MBLX 53055
MBLX 53029	MBLX 53056
MBLX 53030	MBLX 53057
MBLX 53031	MBLX 53058
MBLX 53032	MBLX 53059
MBLX 53033	MBLX 53060
MBLX 53034	MBLX 53061
MBLX 53035	MBLX 53062
MBLX 53036	MBLX 53063
MBLX 53037	MBLX 53064
MBLX 53038	MBLX 53065
MBLX 53039	MBLX 53066
MBLX 53040	MBLX 53067
MBLX 53041	MBLX 53068
MBLX 53042	MBLX 53069
MBLX 53043	MBLX 53070
MBLX 53044	MBLX 53071
MBLX 53045	MBLX 53072
MBLX 53046	MBLX 53073
MBLX 53047	MBLX 53074
MBLX 53048	MBLX 53075
MBLX 53049	MBLX 53126
MBLX 53050	MBLX 53167
MBLX 53051	MBLX 53168
MBLX 53052	MBLX 53169